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ABSTRACT

Since 1970 the early childhood task force of the Education Commission of the States (ECS) has worked to encourage states to focus attention on the quality of the life of children. As the task force explored the subject of child abuse, it quickly realized the need for: (1) better state programs for the prevention, identification and treatment of child abuse; (2) more uniformity among state statutes relating to child abuse; and (3) more cooperation among states and among state agencies in exchanging appropriate information. To encourage states to focus attention on improved methods of reporting, preventing and treating child abuse, the task force asked Brian G. Fraser, staff attorney for the National Center for the Prevention and Treatment of Child Abuse and Neglect, to draft suggested legislation. This booklet is the work of Mr. Fraser, drawn from his experiences during 1972-73. It represents a synthesis of the best of existing state legislation, plus additional language designed to strengthen state capabilities in working to solve the problems of child abuse. For those wishing further information, a bibliography and notes on legal references are included. (Author)

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Child Abuse and Neglect:

Alternatives for State Legislation

The sixth report of
The Education Commission of the States
Early Childhood Task Force

December 1973

CG 009 098

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The photograph on the cover was taken by Eric Morey, a graduate of the University of Colorado and the University of Chicago, who is currently working as a freelance photographer in Denver.

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FOREWORD

Since 1970 the early childhood task force of the Education Commission of the States (ECS) has worked to encourage states to focus attention on the quality of life of children. The task force has been involved with state programs and services for very young children and with strengthening the family.

Anyone concerned with those subjects cannot ignore the problem of child abuse. As the task force explored the subject, it quickly realized that unfulfilled needs are for better state programs for the prevention, identification and treatment of child abuse, for more uniformity among state statutes relating to child abuse and for more cooperation among states and among state agencies in exchanging appropriate information.

To encourage states to focus attention on improved methods of reporting, preventing and treating child abuse, the task force asked Brian G. Fraser, staff attorney for the National Center for the Prevention and Treatment of Child Abuse and Neglect, to draft suggested legislation. The legislation presented in this booklet

is the work of Mr. Fraser, drawn from his experience over the past two years in working with states throughout the nation. It represents a synthesis of the best of existing state legislation, plus additional language designed to strengthen state capabilities in working to solve the problems of child abuse.

The draft bill, taken with the accompanying comments, provides state legislators an opportunity to compare existing statutes and programs in their states with legislation that proposes a comprehensive program of identification, treatment and prevention of child abuse.

Legislation of this type presents state policymakers with an opportunity to demonstrate a willingness to take positive action at the state level. It would also qualify states for funding under provisions in pending federal legislation that would require states to establish procedures for (1) the discovery and reporting of instances of neglect or abuse of children, (2) cooperative arrangements with community agencies and resources dealing with child abuse, (3) a systematic method for receiving child abuse reports on a 24-hour basis and (4) a central collection point for all data on child abuse and neglect.

For those wishing to explore the subject in more detail, a bibliography and notes on legal references are included. The ECS Early Childhood Project will be able to provide some assistance to states interested in further activity in this field. In addition, two organizations actively working in the field of child abuse should be useful contacts: the National Center for the Prevention and Treatment of Child Abuse and Neglect (Dr. Henry Kempe, Director, 1001 Jasmine St., Denver, Colo. 80220); the American Humane Association (Dr. Vincent DeFrancis, Director, Children's Division, P.O. Box 1266, Denver, Colo. 80201).

NOTE: The Office of Child Development in the U.S. Department of Health, Education and Welfare is in the process of developing a revision of its 1962 model state law for the mandatory reporting of child abuse. The intent of this ECS publication is to provide the states with suggestions for an immediate and practical approach to a pressing problem. The new OCD model, when available, will serve as an additional resource.

STATE CHILD ABUSE LAWS NEED REVIEW

All 50 states have some form of statute requiring that the physical abuse of children be reported to public authorities, but many of the laws are limited in their impact. Child abuse continues to be a major unresolved national problem. The purpose of this suggested legislation is to encourage state legislators to review child abuse statutes in their states and, where indicated, to revise existing laws to enable the states to deal more adequately with the problem of child abuse and in a more uniform and cooperative fashion. In addition, it would seem prudent for states to review and revise their child abuse statutes in anticipation of future federal funding which might become available to states which have instituted progressive programs in this field.

An estimated 60,000 children--for the most part younger than 3 years old--are seriously physically abused by their parents each year. Seven hundred die. If child abuse is defined to include neglect, sexual and emotional abuse along with physical abuse, the estimate increases astronomically.

Child abuse is usually not a single assault, but a continuing ongoing trauma. It is characterized by a number of attacks over a period of time, steadily growing more physically and psychologically damaging, both in the severity of each attack and in the cumulative effects. It seems to be conditioned behavior. It is learned from parents and passed from generation to generation. It is not limited to any economic or social group.

Obviously all the complex factors driving an adult to abuse a child cannot be adequately dealt with in legislation. There is a growing awareness of a variety of programs which enable a parent to better cope with the relentless demands of young children. Some are specifically directed toward the abusing or potentially abusing parent: crisis nurseries to give relief from responsibility when tension mounts; therapists available on a one-to-one basis around the clock; discussion groups of those with similar attitudes and needs. Other programs are directed toward supporting fathers and mothers to enhance their effectiveness as parents and toward preparing school-age youngsters for the future demands of parenthood.

Strengthening the family as a state priority is an important focus of the early childhood project of the Education Commission of the States.

But programs to help families are not sufficient alone. The first concern of government must be the health and safety--often the life--of the child. State law must be directed toward identifying abuse at the earliest possible time in order to prevent the abusive case from becoming the terminal case. Too often the law requiring that suspected child abuse be reported is inadequate and, because people are too afraid or uncertain or unaware to report, abusing parents are not stopped.

Every state--plus the District of Columbia, Puerto Rico and the Virgin Islands--has enacted legislation for mandatory reporting of child abuse. But the quality of the laws varies widely. In fact, there are 50 different interpretations of how to solve the same problem. Usually, only physical abuse is covered, and the problems of psychological abuse are not addressed. In at least two states, Kansas and Kentucky, the definition of child abuse has been enlarged to cover sexual and emotional abuse.

More often than not, the legislation is simply punitive and not preventive or rehabilitative. Few state laws include substantial provisions for follow-up social services. Thirty-one impose criminal sanctions for failure to report. At the present time, no state approaches the problem of child abuse from a multidisciplinary point of view.

Too frequently, only a select few professional groups like doctors and nurses are required to report suspected abuse cases to the state department of social services or to the juvenile court system. Teachers, neighbors, relatives who might be aware of a problem before it becomes serious enough to require medical attention are included in mandatory reporting legislation in 16 states. Every state grants immunity to persons required to report, but only a few give similar protection to persons not mandated to report but who do so in good faith. Thirty-nine prohibit "privileged communication" between either husband and wife or doctor and patient in matters involving child abuse.

There is still a desperate need for coordination and cooperation among the several state agencies (social

services, health and mental health and the juvenile court system) concerned about the abused child and his family. The effectiveness of the state agency or agencies charged by law with responsibility for following up on child abuse reports must be increased. Too often, inefficient methods, inadequate staff and training or limited budgets prevent the agency or department from fulfilling its role. Toward that end this suggested legislation spells out specific procedures to be instituted by the agency.

There is a similar need for cooperation among states and uniformity among state laws. Twenty-nine states have established some sort of central registry for keeping track of suspected child abuse cases; but almost all are not yet functioning properly. In some instances there is strong hostility toward the registry concept as an invasion of privacy. Only four states' statutes (Washington, Louisiana, Oregon and Alaska) provide for cooperation with other states in exchanging information and establishing a central registry. Too frequently, in today's mobile society a child may be abused in several different counties and several different states, and there is no way to find out the case history. In addition, because sources of

information are so scattered and incomplete, there is still no nationwide reliable information on the magnitude or the nature of the child abuse problem.

Once abuse has been detected, there are too few provisions to protect the child's interests. His fate is more often than not determined by the courts, without his interests being adequately represented. At least four states (Kansas, Tennessee, Colorado and New York) make it mandatory for a guardian ad litem to be appointed in cases of suspected child abuse.

This suggested legislation is intended to provide all states with alternative approaches to major issues which could be covered in mandatory child abuse reporting statutes. The suggested bill provides a more comprehensive approach than any single existing state statute. When alternatives are included, they are taken from existing statutes with the specific reference in brackets.

The suggested bill is a compilation of existing state laws. Each provision has been proposed, amended, debated and enacted by some state legislatures. Unlike many model bills, it has "met the test of fire." It outlines a pragmatic attack on an immediate problem.

The suggested legislation has three main purposes:

1. To encourage increased and more rapid reporting of all types of child abuse by requiring all professional persons who have contact with children to report suspected abuse cases.

2. To encourage the provision of curative and preventive approaches to child abuse rather than punitive ones, because jailing an abusive parent does not prevent him from abusing children after completion of the jail term and does not help the child.

3. To encourage uniformity and cooperation among the states in order to enhance the flow of comparable information among the states and among state agencies.

Where current statutes are quoted, the state and citation are noted for reference purposes. General research sources for state statutes are listed in the bibliography. Although no attempt has been made to analyze the incidence, the medical aspects or the family dynamics involved in child abuse, significant relevant materials are also included in the bibliography.

Even if this suggested legislation were enacted in the form outlined here, there are at least two complementary

efforts which should be undertaken by the states in order to maximize the impact of the law. If a state does not revise its legislation along the lines suggested, these additional steps are equally as important. The two activities to which states should give priority are (1) the education and training of professionals required to report under the law about their responsibilities and (2) the use of public media to alert the public about the problems of child abuse and to encourage reporting by persons not mandated to report.

The job of educating professionals is mandated only in New York state. Usually the task is assigned to the state welfare department, the state bar association, the state medical association or some community action group. The agency that initiates the process is not as important as that the task be specifically assigned to a group that can do it well. This educational process should include at least several aspects: notification to those persons required to report that they are in fact mandated to do so, providing instructions about the necessary procedures when a report is warranted and providing instruction in identifying child abuse in

its various forms. Idaho has utilized the technique of a governor's conference on child abuse to begin this educational process and has followed that with statewide publicity designed to encourage reporting of child abuse.

The New York legislation mandating that a particular state agency be responsible for education and training reads:

> The department and local departments, both jointly and individually, within the appropriation available, shall conduct continuing publicity and educational programs for local department staff, persons and officials required to report and any other appropriate persons to encourage the fullest degree of reporting of suspected child abuse or maltreatment. The program shall include but not be limited to responsibilities, obligations and powers under this title and chapter as well as the diagnosis of child abuse and maltreatment and the procedures of the child protective service, the family court and other duly authorized agencies. [McKinney's Consol. Laws of N.Y., Soc. Serv., Title 6, §§421 (1973)]

The impact of a public media campaign has been demonstrated in Florida. Statistics from that state indicate the extent of the problem. In 1971, the Florida Legislature revised that state's child abuse statutes. To implement the new legislation a statewide publicity campaign--using television, radio and posters--was initiated to

make the public aware of the problem of child abuse and of how and where to make reports. In the first year of operation, there were more than 19,000 reports of child abuse. That compares with a total of 200 reports in the year before the new legislation was enacted.

Reporting of suspected child abuse in Florida has continued at approximately the same level. In the first 22 months of operation under the new legislation--from Oct. 1, 1971, through Aug. 15, 1973--there were 43,490 reports of child abuse. Of that total, 22,884 were investigated. The investigations revealed that reports on 14,326 of the children were valid, a validity rate of 60 per cent.

Although the Florida law requires an immediate investigation of all reports, the legislature has not provided enough funding for the staff necessary to investigate all reports. Approximately 50 per cent of the reports have been investigated.

Florida's reporting system utilizes a single phone number that may be called toll-free from any point in the state. The phone is manned continuously.

Types of abuses that have been reported in Florida

include sexual abuse, skull fractures, broken bones, cuts, burns, bruises, beatings, malnutrition, medical neglect, abandonment and death. Twenty-one children were dead on arrival and 15 others died as a result of injuries in the 22-month reporting period. The majority of alleged abusers were mothers--22,093. Fathers were alleged abusers in 6,777 reports and both parents in 9,510 reports.

The majority of child abuse reports in Florida involved whites: 16,929 males and 16,689 females. Among blacks, reports were received on 4,636 males and 4,759 females.

Most of the reports of child abuse came from neighbors, relatives, parents, police, social workers and schools--in that order. Doctors, nurses, hospitals and institutions made relatively few reports.

HOW TO USE THIS BOOKLET

The suggested legislation is printed on the left--even-numbered pages 18 through 88. Comments on the legislation, section by section, are printed on the right--odd-numbered pages 19 through 89.

This booklet has been laid out in this format so that the legislation and the comments on it can be read together. The commentary clarifies and expands upon the legal language and suggests the implications of the alternatives presented. Its purpose is to insure that the complications and ramifications of the bill are fully understood.

When alternatives are presented in the suggested legislation, they are taken from existing state statutes with the specific reference in brackets.

AN ACT RELATING TO MANDATORY REPORTING OF CHILD ABUSE

BE IT ENACTED by the legislature of the State of _____.

Section 1. Purposes. It is the purpose of this Act, through the complete reporting of child abuse, to protect the best interests of the child, to offer protective services in order to prevent any further harm to the child, to stabilize the home environment, to preserve family life whenever possible, and to encourage cooperation among the states in dealing with the problem of child abuse.

ALTERNATIVE. The public policy of this state is: to protect children whose health and welfare may be adversely affected through injury and neglect; to strengthen the family and make the home safe for children by enhancing the parental capacity for good child care; to provide a temporary or permanent nurturing and safe environment when necessary; and for these purposes to require the reporting of child abuse, investigation of such reports by a social agency and provision of services where needed, to such child and family. [Conn. Gen. Stat. Ann. §17-38 (a) (1973)]

COMMENTS ON THE SUGGESTED LEGISLATION

Purposes. The purpose of this act is preventive and curative and not punitive in nature. It is intended to encourage reporting within a state and cooperation among the states in order to identify abuse as quickly as possible. With the identification of a specific instance of child abuse, it is intended that the state's resources will be brought to bear in an effort to protect the child's health, to prevent the abuse from occurring again and to keep the family unit intact whenever possible.

Keeping the family unit intact, however, is not the primary purpose of this legislation. Protection of the child takes first priority. In many cases, the protection of the child's interests and keeping the family together will be one and the same. They need not be mutually exclusive. Unfortunately, in some situations, they are. In these cases, the two should be separated and primary emphasis should be placed on the welfare of the child.

Section 2. Definitions. When used in this Act, unless the specific content indicates otherwise:

(a) "child" means any person under 18 years of age;

(b) "abuse" means any physical injury or mental injury inflicted on a child other than by accidental means or an injury which is at variance with the history given of it;

COMMENTS

Definitions. (a) This definition of a "child," taken from Maryland legislation, is relatively uniform across the country. Washington state, however, noting that the purpose of an act of this type is to protect those persons who cannot protect themselves, has defined a child to be: "Any person under the age of 18 years and shall include mentally retarded persons, regardless of age." [Rev. Wash. Code Ann. §26.44.020(6) (1972)] A definition that specifically includes the mentally retarded is preferable, although it obviously greatly expands the scope of the bill, and a generally agreed-upon definition of mentally retarded may be difficult to achieve. For other definitions of a child incorporating a physical or mental disability, the statutes of Delaware, Nebraska and Ohio are especially helpful.

(b) The definition of "abuse" used here is a combination of Connecticut and Louisiana legislation. As defined, "abuse" has a broad context. It refers to any physical injury which is not accidental in nature. The word "serious," which in many state statutes precedes "physical injury," has been purposely deleted because legislation designed to

(c) "neglect" means a failure to provide, by those legally responsible for the care and maintenance of

provide an effective child abuse program should be concerned with all injuries, not just the serious ones. In many cases, simple physical injuries become serious physical injuries and by that time it's too late to offer adequate assistance.

The definition also refers to mental injury. This connotes emotional abuse. A number of state statutes make direct reference to and define abuse to include emotional abuse. Statutes in this category include those of Delaware, Louisiana, Kansas, Tennessee and Texas. Here, mental injury is not defined so as to be combined with a physical injury, although many state statutes refer to serious physical injury resulting in emotional harm, or serious mental abuse resulting in physical injury. The definition here is intended to connote pure emotional abuse, but does not exclude emotional damage resulting from physical abuse. An "injury which is at variance with the history given of it" is included because parents who have seriously injured their children often propose explanations that do not adequately explain the injury.

(c) "Neglect" includes the willful commission or negligent omission of some act by the parent. This is intented

the child: the proper or necessary support; education, as required by law, or medical, surgical or any other care necessary for his well-being;

(d) "unfounded report" means any report made pursuant to this Act which is not supported by some credible evidence;

(e) "department" means the Department of Social Services.

ALTERNATIVE 1. As used in this Act, "physical or mental abuse" means infliction of physical or mental injury, or causing of deterioration of a child and shall include failing to maintain reasonable care and treatment or exploiting a child to such an extent that the child's health, morals

to cover situations in which the child is not physically or mentally abused, but which, if unchecked, present as great a danger to the child, such as inadequate diet for a child diagnosed to have a protein deficiency (PKU) at birth and is thus in danger of mental retardation. The context of neglect is broad enough to cover the failure to thrive and neglect and starvation clauses found in many mandatory reporting statutes.

(d) The definition of an "unfounded report" is intended to solve the problem of the malicious, bad faith report. In too many cases, reports of suspected abuse with no credible evidence to justify them are listed in a central registry. This is an attempt to distinguish between those reports that should be listed and those that should not.

or emotional well-being is endangered. [Kans. Stat. Ann. New §5 of 1972, Senate Bill No. 36 (L.1972 Ch. 164)]

ALTERNATIVE 2. Abuse means any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, sexual molestation, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death or the circumstances indicate that such condition or death may not be the product of an accidental occurrence. [Colo. Rev. Stat. §22-10-1(4) (1972)]

Section 3. Persons Mandated to Report Suspected Abuse, Sexual Abuse and Neglect. When any physician, surgeon, medical examiner, coroner, dentist, osteopath, optometrist, chiropractor, podiatrist, resident, intern, registered nurse, hospital personnel (engaged in admission, examination, care or treatment of persons), Christian Science practitioner, teacher, school official, social service worker, day care center worker or any other child or foster care

COMMENTS

Persons Mandated to Report. The basic format for Section 3 is from the New York legislation, and the provision for the report of conditions or circumstances that would reasonably result in abuse is from the Colorado law.

The number of individuals required to report under this section is extensive. By making provisions for all individuals and all professionals who come into contact with children to report suspected abuse, the problem may be

worker, mental health professional, peace officer or law enforcement official has reasonable cause to suspect that a child has been subjected to abuse, sexual abuse or neglect or observes the child being subjected to conditions or circumstances which would reasonably result in abuse, he shall immediately report or cause a report to be made to the department. Whenever such person is required to report under this Act in his capacity as a member of the staff of a medical or public or private institution, school, facility or other agency, he shall immediately notify the person in charge of such institution, school, facility or other agency or his designated agent, who shall then become responsible for making a report or cause such report to be made.

In addition to those persons and officials required to report suspected child abuse, sexual abuse and/or neglect, any other person may make a report if such person has reasonable cause to suspect that a child has been abused or neglected.

identified quickly and needed assistance offered. If mandatory reporting were limited to physicians, only serious abuse cases would be identified.

Sexual abuse has not been delineated in definitive terms to enable courts to interpret this broadly to include sexual physical assaults, consensual sexual activity with a minor and nonphysical sexual assaults such as exhibitionism. The new Connecticut Children's Code has been amended to allow hospitals, physicians and clinics to examine and treat a minor for venereal disease without his parents' consent. Examination and treatment are confidential unless the minor is under 12 years of age, and then a report is required under the statute mandating reports of suspected child abuse. The assumption is that sexual contact with or without the consent of a child under 12 constitutes abuse and should be reported as such.

Finally, this section provides for voluntary reports by any person who has reasonable cause to suspect abuse. This is to encourage all persons to report suspected abuse and to make certain that such reports will be identified

SUGGESTED LEGISLATION

ALTERNATIVE. Any person having cause to believe that a child's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect, such as licensed physicians, interns or residents, nurses, hospital staff members, teachers, social workers and other persons or agencies having the responsibility for the care of children, shall report in accordance with subsection "d" of this section.

Any other person having cause to believe that a child's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect may report in accordance with subsection "d" of this section. [La. Rev. Stat. §14-403 (c) (1) and (2) (1973)]

and processed. At the same time, it insures that individuals making voluntary reports will not be subjected to criminal liability for failure to report. Only those individuals who are required to report would be criminally and civilly liable for failure to do so. Presently, 16 states require that "any other person who has reasonable cause to suspect" abuse must report. This suggested legislation does not make such reports mandatory. By providing procedures to handle reports from all individuals, and by alerting the public to the problem of child abuse and the procedures that should be followed when it is suspected, the same ends will be served. A broader mandate is almost unenforceable and increases the responsibilities of the department inordinately.

The suggested legislation designates, for purposes of illustration, the department of social services as the responsible state agency. It may not be the appropriate agency in every state. It is used to emphasize that if the problem of child abuse is to be approached from a curative and preventive standpoint, it may be wise to

Section 4. Mandatory Reporting to a Medical Examiner and a Post-Mortem Investigation. Any person or official required to report cases of suspected child abuse, sexual abuse or neglect, under Section 3 of this Act, including workers of the local child protective services, who has reasonable cause to suspect that a child has died as a result of child abuse, sexual abuse or neglect shall report that fact to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall report his findings to the police, the appropriate district attorney, the

involve a social service agency initially, rather than a law enforcement agency. The legislation provides for the department to notify police that a report of suspected abuse has been received. If state legislatures that enact this or similar legislation are unwilling to appropriate funds to provide the necessary staff support, it may be wise to require that the report be made to the police and to the department of social services concurrently.

Reporting to a Medical Examiner; Post-Mortem Investigation. Until a few years ago, coroners and medical examiners were not required to report suspected incidents of child abuse, sexual abuse and neglect. As a result, numbers of child abuse deaths were never noted or reported. It is true that if a child is dead he is no longer in danger, but one purpose of child abuse legislation is to protect other children in the same family and to identify abusive parents. To accomplish this, deaths resulting from suspected child abuse should be reported by the coroner or medical examiner and the same procedure followed

local child protective service agency and, if the institution making the report is a hospital, to the hospital.

Section 5. Color Photographs and X Rays. Any person who is required to report cases of child abuse, sexual abuse and/or neglect may take or cause to be taken, at public expense, color photographs of the areas of trauma

as if the child were still alive. Several states--including Colorado, Illinois, Kentucky and Washington--have noted this deficiency in their statutes and now require coroners and medical examiners to report.

Section 4, however, goes one step further and requires reports to a medical examiner/coroner when someone other than a medical examiner or coroner suspects that a child has died as a result of child abuse, sexual abuse and/or neglect. The medical examiner/coroner is required to accept the report, make an investigation and report his findings to the police, district attorney and the welfare department.

The intent is to provide more complete information concerning potential suspected abusers and incidents of child abuse for the protection of other siblings in the same family.

Color Photographs; X Rays. This section is intended to provide data to augment the department's file pertaining to child abuse. It is assumed that such photographs would become a portion of the medical file and thus could

visible on a child and, if medically indicated, cause to be performed radiological examinations of the child. Any photographs and/or X rays taken shall be sent to the department as soon as possible. Whenever such person is required to report under this Act, in his capacity as a member of the staff of a medical or other private or public institution, school, facility or agency, he shall immediately notify the person in charge of such institution, school, facility or agency or his designated delegate, who shall then take or cause to be taken, at public expense, color photographs of physical trauma and shall, if medically indicated, cause to be performed radiological examination of the child. [McKinney's Consol. Laws of N.Y., Soc. Serv., Title 6, §§417 (1973)]

be used in court proceedings. This section specifically states that color photographs may be taken of the physical trauma visible on a child. Legally, this means that individuals mandated to report abuse do not need parental permission or release to take the necessary photographs. The language of this section specifically states that any person required to report may take color photographs, but when such person is a member of a staff of a hospital or any other private or public institution, school, facility or agency, he shall notify the person in charge who shall take such color photographs. It is assumed that the authority to take color photographs also grants authority to take black and white photographs.

Only New York now grants legislative permission to individuals required to report abuse to cause color photographs to be taken without the parents' permission. Washington, however, does grant permission to the local law enforcement agency and social and health services investigating reports to photograph the child for documentary purposes.

SUGGESTED LEGISLATION

Section 6. Protective Custody. A police officer, a law enforcement official or a designated employee of the city or county department of social services, may take a child into protective custody or any person in charge of a hospital or similar institution or any physician treating a child may keep that child in his custody without the consent of the parent or the guardian, whether or not additional medical treatment is required if the circumstances or conditions of the child are such that continuing in his place of residence or in the care and custody of the parent, guardian, custodian or other person responsible for the child's care presents an imminent danger to that child's life or health. Provided, however, that such custody does not exceed 72 hours and that the juvenile court and the department are notified immediately in order that child-protective proceedings may be initiated. The director of the local social services or health agency may give effective consent for medical, dental, health and hospital services for any abused child under the age of 16 years.

COMMENTS

Protective Custody. The right of a physician or the head of a hospital, clinic or similar institution to retain custody of the child in his care is beginning to gain wide acceptance. The right to retain custody under this section is permitted even if there is no immediate need for additional medical treatment and even if the parents object to the retention of custody. The requirement is that there exists some immediate danger to the child's life or health. With the addition of the word "health," the minimum requirement is simply that if the child were released, there would be a possibility that the child might suffer further injury. There is no requirement that the injury be "serious."

This section is intended to give doctors, hospitals, clinics and similar institutions more flexibility in dealing with what they believe may be a potentially explosive and dangerous home environment for a child. This section is particularly pertinent in those situations where it proves difficult to obtain a police hold or a court order. There are procedural safeguards: (1) if custody is

ALTERNATIVE. *Any physician examining a child with respect to whom abuse is suspected shall, after reasonable attempts to advise the parents, guardian or other person having responsibility for the care of the child that he suspects has been abused, have the right to keep such child in the custody of the hospital for no longer than 96 hours, with or without the consent of his parents, guardian or other person having responsibility for his care, pending study of the family and home by the welfare agency concerned or the filing of a petition to the juvenile court. [Conn. Gen. Stat. Ann. §17-38(d) (1973)]*

Section 7. Reporting Procedures.

(a) Reports of child abuse, sexual abuse and neglect made pursuant to this Act shall be made immediately by telephone and shall be followed by a written report within 48 hours if so requested by the receiving agency. The receiving agency shall immediately forward a copy of this report to the statewide central registry on forms supplied by said registry. *[See Section 13, page 70.]*

(b) Such reports shall include the following information: the names and addresses of the child and

retained by a hospital, physician or other person, legal proceedings for temporary custody must be brought within 72 hours; and (2) at the hearing, the welfare department has the burden of showing that the child is, indeed, in some danger and that this is not a frivolous assumption on the part of the person retaining custody.

Reporting Procedures. The intent of this section is to require immediate reporting so that appropriate services and protective action can be taken. The suggested legislation provides for a written report by the reporter or the receiving agency. Whether individuals required to report child abuse are also required to make a written report is left to the discretion of the receiving agency. A number of states require an immediate oral report to the receiving agency followed by a written report within some arbitrary time period. Other states simply require an oral

his parents or other persons responsible for his care, if known; the child's age, sex and race; the nature and extent of the child's injuries, sexual abuse or neglect, including any evidence of previous injuries, sexual abuse or neglect to the child or his siblings; the name and address of the person responsible for the injuries, sexual abuse or neglect, if known; family composition; the source of the report; the person making the report, his occupation and where he can be reached; the actions taken by the reporting source, including the taking of photographs and X rays, removal or keeping of the child or notifying the coroner, medical examiner and other information that the person making the report believes may be helpful in the furtherance of the purposes of this Act.

(c) A copy of this report shall immediately be made available to the appropriate law enforcement agency for its consideration.

(d) A written report from persons or officials required by this Act to report shall be admissible in evidence in any proceeding relating to child abuse, sexual abuse or neglect.

report and leave it up to the receiving agency whether or not the reporter will complete a written report.

If individuals required to report child abuse were also required, by statute, to make a written report, it might have a chilling effect on the incidence of reporting. This is the rationale for requiring an oral report, but leaving the question of a written report to the discretion of the agency.

(b) The content of the report is extensive, as it is in a number of states--including Connecticut, Oregon and West Virginia. The intent is to identify the child who is endangered, the probable abuser, any other siblings who may be in danger and the identity of the reporter so that an extensive follow-up may be made, if necessary. This information, it is expected, will be used for research purposes, for legal proceedings and for tracking abusive parents or caretakers until the child is out of danger.

The report requires the name and address of the parents and of the suspected abuser. In many cases

ALTERNATIVE. Each report made pursuant to the provisions of subsection "e" shall be made to the agencies as provided for hereinafter, both orally and in written form; both of the reports shall be made as soon as is reasonably possible in the circumstances; but in any case, the written report must be made within 48 hours of the contact, examination, attention or treatment which disclosed the existence of possible abuse. The oral report shall be made either by telephone or direct communication to the local department of social services or the appropriate law enforcement agency. The agency to which the report is made shall immediately notify the other agency. Nothing, however, shall prohibit the local department of social services and the appropriate law enforcement agency from jointly agreeing to cooperative arrangements. The required written report shall be made in all cases to the local department of social services and a copy shall be sent to the local state's attorney.

The oral and written reports shall contain the following information, or as much thereof as the person making the report shall be able, in the circumstances,

these are not the same. If the suspected abuser is a relative or a friend, the report should be filed in that name, appropriately cross referenced, and not in the parents' or caretakers' names.

to furnish:

1. The name and home address or addresses of the child(ren) and the parents or other persons responsible for the care of the child(ren) in question.

2. The present whereabouts of the child(ren) if not the same as the home address or addresses.

3. The age or ages of the child(ren).

4. The nature and extent of the injuries of the child(ren) in question, including evidence or information available to the person or agency rendering the report of previous injury(ies) possibly resulting from abuse and

5. All such information available to the reporter which would be of aid in establishing the cause of the injury(ies) and the identity of the person(s) responsible therefore. [Md. Code Ann. §27-35(A) (D) (1973)]

COMMENTS

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Section 8. Duties of the Department Upon Receipt of the Report.

(a) The department shall make a thorough investigation promptly upon receiving either the oral or the written report. The primary purpose of such an investigation shall be the protection of the child.

(b) The investigation shall include the nature, extent and cause of the child abuse, sexual abuse or neglect; the identity of the person responsible therefore; the names and conditions of other children in the home; an evaluation of the parents or persons responsible for the care of the child; the home environment and the relationship of the child(ren) to the parents or other persons responsible for their care; and all other pertinent data.

(c) The investigation shall include a visit to the child's home, a physical, psychological or psychiatric examination of all children in that home; an interview with the subject child. If the admission to the home, school or any other place that the child may be, or permission of the parent or other persons responsible for

COMMENTS

Duties of the Department. The duties of the department spelled out in this section are those which would logically follow a report of suspected abuse. States with statutes similar to the suggested legislation are Texas, Connecticut, Louisiana, Tennessee and North Carolina.

In this section, an investigation is required immediately upon receipt of an oral or written report, whichever comes first. The primary purpose of the department's investigation is the protection of the child.

It is intended that the department's investigation would be a thorough examination of the contents of the report to determine not only the safety of the reported child but of all other children in the home.

(c) This paragraph specifies that a complete investigation be made. This includes a visit with the child, a visit to his home and a physical, psychological or psychiatric examination. Provision is made for any exigencies that may develop with parents who balk or schools or agencies that prove to be uncooperative.

the child(ren) for the physical, psychological or psychiatric examination cannot be obtained, then the juvenile court or the district court, upon cause shown, shall order the parents or persons responsible and in charge of any place where the child may be to allow entrance for the interview, above examinations and investigation.

(d) If, before the examination is complete, the opinion of the investigators is that immediate removal is necessary to protect the child(ren) from further abuse or neglect, the juvenile court or the district court, on petition by the investigators and with good cause being shown, shall issue an order for temporary removal and custody.

(e) The county agency responsible for the protection of juveniles, or county welfare unit, shall make a complete written report of the investigation together with its recommendations. Such reports shall be made available to the juvenile court or district court, the district attorney and the appropriate law enforcement agency upon request. [Tex. Family Code, Title 2, §34.05 (1973)]

COMMENTS

(d) If the child is in danger in his home environment, the investigators have the option of petitioning the court for temporary custody. This, of course, assumes that the child has not been taken into protective custody by a physician or other person under Section 4. Section 4 and Section 8(d) should be read together and compared with regard to the burden required for obtaining temporary custody.

(e) Although the Texas statute is cited, the language of this paragraph differs from the Texas version in that the report and recommendations shall be made available to the appropriate court, the district attorney and the law enforcement agency only upon request. The Texas statute requires that the report be forwarded to the court, the district attorney and the law enforcement agency. The

(f) The department shall make a written report or case summary, together with services offered and accepted, to the state central registry on forms supplied by the registry for that purpose.

rationale for the change is that a mandatory requirement that the report be forwarded would severely limit the effectiveness of the protective caseworker since it would be destructive to the worker's ability to establish a working relationship with the family.

Although some states set a specific period for completing the investigation and recommendations, no minimum time limit is given. The assumption is that both the investigation and the report will be available upon request at the department's earliest convenience. It is believed that more could be lost by requiring a brief report to the court than could be gained by obtaining a quick disposition. Any danger to the child during an investigation could be adequately compensated for by petitioning the court for temporary custody.

(f) A follow-up report must be made to the central registry concerning the incident of child abuse. Thus, at a minimum, the central registry will contain an initial report of suspected abuse, sexual abuse and/or neglect, together with a summary of the report of the investigation

Section 9. Immunity From Liability. Any person, official or institution participating in good faith in the making of a report, the taking of photographs or the removal of a child pursuant to this Act, shall have

by the department for every case reported. (See Section 13.)

The Texas, Louisiana and Tennessee statutes offer excellent examples of the duties of the department upon receipt of a report of child abuse. For purposes of comparison, the Colorado statute on this subject follows:

> The department shall investigate each case of alleged child abuse referred to it by law enforcement agencies and shall provide such social services as are necessary and appropriate under the circumstances to protect the child and to preserve the family.
>
> The department may make a request for further assistance from the law enforcement agency, or take such legal action as may be appropriate under the circumstances.
>
> The department shall make a written report or case summary as the division of public welfare may require, to the state registry of child protection of all reported cases of child abuse and action taken with respect to all such cases. [Colo. Rev. Stat. §22-10-4(1) (2) (1972)]

Immunity From Liability. To encourage reporting, this section protects from civil and/or criminal liability any person who makes a report. Presently, every state offers some form of immunity from liability under mandatory

immunity from any liability, civil or criminal, that otherwise might result by reason of such actions. For the purpose of any proceedings, civil or criminal, the good faith of any person required to report cases of child abuse, sexual abuse or neglect shall be presumed.

ALTERNATIVE 1. A person reporting harm shall be presumed to be acting in good faith and shall, therefore, be immune from any liability, civil or criminal, that might otherwise be incurred or imposed for such actions. [Tenn. Code Ann. §37-1209 (1973)]

ALTERNATIVE 2. Any person, other than the alleged violator, reporting pursuant to this section in good faith shall have immunity from liability that otherwise might be incurred or imposed. Such immunity shall extend to participation in any judicial proceeding resulting from such report. [La. Rev. Stat. §14-403 (e) (1973)]

Section 10. Abrogation of Privileged Communications. Any privilege between husband and wife or between any professional person, except lawyer and client,

reporting statutes. This section of the suggested legislation provides immunity for individuals required to report and, in addition, covers those persons who are not required to do so. Immunity is granted from the actual reporting (Section 3), from the taking of photographs or X rays (Section 9) and from taking a child into protective custody without a court order and without the parents' permission (Section 9).

Immunity is granted only if the report, the color photographs and the taking into protective custody are done without malice and in good faith. However, under this act, good faith is presumed. In effect, this means that anyone bringing suit has the burden of overcoming the presumption. Presently, 11 states presume good faith for immunity purposes under the mandatory reporting statutes.

Abrogation of Privileged Communications. This section abrogates the privileged status of confidential communications in regard to child abuse, sexual abuse and/or neglect

including but not limited to physicians, ministers, counselors, hospitals, clinics, day care centers, and schools and their clients, shall not constitute grounds for excluding evidence at any proceeding regarding child abuse, sexual abuse and/or neglect of a child or the cause thereof.

Section 11. Penalty for Failure to Report.

(a) Any person, official or institution required by this Act to report a case of suspected child

in all relationships, professional or otherwise, except the attorney-client relationship. Currently, 42 states abrogate the privileged status of confidential communications between certain persons in cases involving child abuse, and 12 states abrogate privileged communications between all persons except those between attorneys and their clients.

In most cases of child abuse, the only eyewitnesses are the parents and the child. The child is either too young or too intimidated to testify and the suspected abuser, of course, cannot be forced to testify against his own interests. To circumvent the possibility of having to establish a case of child abuse, sexual abuse or neglect on purely circumstantial evidence, the privileged status of confidential communications and events between husband and wife, doctor and patient, is denied in this instance. This should balance the judicial scales toward protecting the interests of the child.

Penalty for Failure to Report. Under this section, individuals who are required to report and who willfully fail to do so become civilly and criminally liable.

abuse, sexual abuse or neglect, who willfully fails to do so shall be subject to a fine of $100 and up to five days in jail.

(b) Any person, official or institution required by this Act to report a case of suspected child abuse, sexual abuse or neglect, and who willfully fails to do so, shall be civilly liable proximately caused by such failure.

COMMENTS

Subsection (a) is little more than a slap on the wrist, a criminal sanction levied by the state for failure to report. The fine and jail sentence could be set at any level.

Subsection (b), however; clears the way for a civil suit on behalf of the child for damages caused by the willfull failure to report. Previously, a suit for damages on behalf of the injured child was via the route of "negligence per se," which often proves complicated and lengthy.

Twenty-nine states now provide criminal sanctions for failure to report suspected abuse.

In task force discussions, several members expressed significant reservations about recommending penalties for failure to report, arguing that the establishment of liability for failure to report might tend to result in over-reporting by those fearing possible legal action. They felt that many reports might be motivated more by a fear of legal incrimination and penalty rather than real concern for the welfare and well-being of a child. It was also felt that the establishment of penalties for failing to report

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might instill a fear on the part of individuals to become involved at all, and that a legal penalty for failure to report might foster the inclination toward minding one's own business, thus defeating the intent of the legislation. Instead of establishing penalties, it was felt that efforts should be directed at breaking down the barriers of resistance to reporting. This could best be achieved by persistent and continuing educative effort to sensitize the mandated and nonmandated public as to the seriousness of the problem and the importance of reporting.

On the other side of the argument there were equally strong arguments that penalties for failure to report would not result in overreporting and that there is no substantial evidence to support the arguments against penalties. It was felt that inclusion of a penalty for failure to report, rather than increasing resistance to reporting, would have the opposite effect. Doubt was expressed that from a pragmatic point of view anyone would be prosecuted for failure to report in a one-time situation, because a diagnosis is too subjective. And there have been cases where pediatricians have been sued civilly for failure to report.

Section 12. The Guardian Ad Litem.

(a) The Court, in every case filed under this Act, shall appoint a guardian ad litem for the child. The guardian shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian pursuant to this Act. The guardian ad litem shall, in general, be charged with the representation of the child's best interests. To that

COMMENTS

These cases involved children who were seen more than once and abuse was readily apparent.

After weighing the arguments pro and con--both of which have merit--it was decided to include in the suggested legislation the section which provides for penalties for failure to report but to emphasize in the accompanying comments the significant differences of opinion on this question.

There was no disagreement, however, concerning the need to educate the public about the extent of the problem and what should be done in the event that individuals do become involved in reporting cases of child abuse and neglect.

Guardian Ad Litem. This section is intended to give every abused, sexually abused and neglected child his own spokesman. The language requiring the appointment of a guardian ad litem does not require that the guardian ad litem be an attorney. However, the assumption is that any court appointment will be an attorney. When proceedings are initiated under this act, the appointment of the guardian ad litem is not discretionary with the court.

end, he shall make such further investigation that he deems necessary to ascertain the facts, to interview witnesses, examine and cross-examine witnesses in both the adjudicatory and dispositional hearings, make recommendations to the court and participate further in the proceedings to the degree appropriate for adequately representing the child.

(b) At any time after the completion of the adjudicatory hearing of a case of child abuse, sexual abuse or neglect and a finding of dependency therein, the court may, on its own motion, or the motion of the guardian ad litem, order the examination by a physician, psychologist or psychiatrist, of any parent or other person having custody of the child at the time of the alleged abuse, sexual abuse or neglect, if the court finds such an examination is necessary to the proper determination of the dispositional hearing of the case. The dispositional hearing may be continued pending the completion of such examination. The physician, psychologist or psychiatrist conducting such an examination may be required

COMMENTS

Currently 29 states require that an attorney be appointed to represent the child's interests, but this section goes a few steps further. A guardian ad litem, by definition, is more than a lawyer. He is a guardian of the child in terms of present legal proceedings and a conduit through which the child's long-range interests are protected and provided for.

To provide the guardian ad litem the tools necessary for accomplishing these ends, he is given access to all relevant records and reports pertaining to the suspected abuse; he is entitled to make his own investigations; to examine and cross-examine all witnesses; to call his own witnesses. Also, he may move that the suspect parties be required to undergo a physical, psychological or psychiatric examination when the proceedings move beyond an adjudicatory hearing. The provisions of Section 9 and Section 12, read together, will provide the court with psychiatric evaluations of both the child and his caretaker. This is consistent with the purpose of taking a curative and preventive approach to the problem and not a punitive one.

to testify in the dispositional hearing concerning the results of such examination and may be asked to give his opinion as to whether the protection of the child requires that he not be returned to the custody of his parents or other persons having custody of him at the time of the alleged abuse, sexual abuse or neglect. The rules of evidence as provided by law shall apply to such testimony except that the physician, psychologist or psychiatrist shall be allowed to testify to conclusions reached from the hospital, medical, psychologicial or laboratory records, tests or reports, provided the same are produced at the hearing. Persons so testifying shall be subject to cross-examination as are other witnesses. No evidence acquired as a result of any such examination of the parent or any other person having custody of the child may be used against such person in any subsequent criminal proceedings against such person or custodian concerning the abuse or nonaccidental injury of the child.

ALTERNATIVE. In all hearings the judge of the juvenile court shall appoint a guardian ad litem who shall

COMMENTS

The guardian ad litem's recommendations are not binding on the court. His role is akin to that of amicus curiae, but the better he does his job, the more precise his formulation of the problem and the more appropriate his recommendations--the more likely the court is to agree. The guardian ad litem is an excellent vehicle to insure that all persons with knowledge testify, that all facts are ferreted out for the court's determination and all possible dispositions are made available for consideration by the court.

be an attorney at law to appear for, represent and defend:

(a) A child who is the subject of proceedings under this Act; or

(b) A parent who is a minor, or who is a mentally ill person or otherwise incompetent, and whose child is the subject of proceedings under this Act. The guardian ad litem shall make an independent investigation of the facts and representations made in the petition and he may be allowed a reasonable fee for such services, to be fixed by the juvenile court and taxed as costs in such proceedings; such costs may be taxed to the parent, conservator, or custodian, or they may be taxed to the county and paid out of the county general fund. [Kans. Stat. Ann., §38-821 (1972)]

Section 13. Establishment of a Central Registry.

A.

(1) There shall be established a statewide central registry for child abuse, sexual abuse and neglect made pursuant to this Act.

COMMENTS

Central Registry. This section would create a statewide central registry to collect and record reports of suspected child abuse, sexual abuse and neglect *so that* the records may be used for research purposes, to track abusive parents and children when they "shop" for doctors or hospitals and for use in evaluating the condition of

(2) There shall be a single statewide telephone number that all persons, whether mandated by law or not, may use to report cases of suspected child abuse, sexual abuse and neglect and that all persons so authorized by this Act may use for determining the existence of prior records in order to evaluate the condition or circumstances of the child before them. Such <u>oral</u> *telephone reports shall immediately be transmitted by the central registry to the local child protective services. If the records indicate a previous report concerning the subject of the report or other pertinent information, the appropriate local protective agency shall be notified of these facts.*

(3) The central registry shall contain, but shall not be limited to: all information in the written report; record

the child being examined. Twenty-nine states have legislatively mandated the concept of a central registry.

All material in the central registry is considered confidential and may only be released to those persons enumerated in subsection (4).

Recognizing the potential for personal indiscretion and abuse in regard to suspected incidents of child abuse, certain procedural safeguards are provided:

a. A report is considered to be confidential in nature.

b. The suspect has the right to review the complete report except for the name of the person who initiated the report and the names of persons who cooperated in any subsequent investigation.

c. The subject of the report may demand a fair hearing to have the record amended, sealed or expunged.

d. In such a hearing, the burden of going forward is on the department.

e. All unfounded reports are expunged immediately.

f. Reports are sealed when the child reaches his 18th birthday.

of the final disposition of the report including services offered and services accepted; the plan for rehabilitative treatment; the names and identifying data, dates and circumstances of any persons requesting or receiving information from the registry; and any other information which might be helpful in furthering the purposes of this Act.

(4) Reports made pursuant to this Act, as well as any other information obtained, and reports written or photographs taken concerning such reports in the possession of the department shall be confidential and shall be made available to (a) a physician who has before him a child whom he reasonably believes may have been abused, sexually abused or neglected; (b) a person authorized to place a child in protective custody when such person has before him a child whom he

g. A penalty is provided for the unlawful release of information.

Previously, one of the greatest obstacles in requiring professionals to report suspected abuse was the argument that reporting by itself was inconsequential. Unless some affirmative action was taken when the report was made, the act of reporting by itself was virtually useless. This section provides for a complete analysis of action taken following the report of suspected abuse upon request of the person making the initial report. The rationale is that access to such a report will provide feedback to persons required to report, thus reinforcing such reporting behavior. The report can also be used as a measuring stick to evaluate local child protective services.

Subsection (4) takes into consideration that persons who are abused in their childhood often grow up to be parents who abuse their own children. For this reason, records which were sealed may be referred to when it is shown that the suspected abused child is the offspring of a person who was, himself, abused as a child.

reasonably believes may have been abused, sexually abused and/or neglected and such person requires such information to determine whether to place such child in protective custody; (c) a duly authorized agency having responsiblity for the care or supervision of the subject of a report; (d) any person who is the subject of a report; (e) a court where it determines that such information is necessary for the determination of an issue before the court; (f) any person engaged in bona fide research.

After a child, who is the subject of a report, reaches the age of 18 years, access to a child's record under subsections A and B of this section shall be permitted only if a sibling or offspring of such child is before such person and is a suspected victim of child abuse,

COMMENTS

Part (3) of subsection A requires that individuals requesting information from the central registry on a particular child be listed under that child's name in the central registry. The assumption is that anyone who requests information from the central registry has reasonable cause to suspect abuse and that these suspicions may be beneficial to some other person trying to make a determination of whether or not the child has been abused.

Finally, subsection B of Section 13 takes into consideration the fact that people today often move across state lines as well as county lines. It is intended that subsection B will provide the groundwork for cooperation and communication among states so that abusive and potentially abusive parents may be tracked as they move across the country. Several states now provide for exchange of child abuse reports, among them Alaska, Louisiana and Oregon.

For purposes of comparison, the Texas statute on this subject follows:

> There shall be established and maintained in Austin, Texas, by the Texas State Welfare

sexual abuse and/or neglect. In addition, a physician or person in charge of an institution or agency making a report shall receive, upon request, a summary of the findings and action taken by the local child protection agency in response to the report. The amount of such detail shall depend upon the sources of the report and shall be established by regulations created by the commissioner of the central registry. However, under no circumstances shall the information be released unless the person's or official's capacity is confirmed by the department and the released information states whether or not the report is founded or unfounded. A person given access to the names or other information identifying a subject of the report, except the subject of a report, shall not divulge or make public such

> Department, a central registry of reported cases of child abuse and/or neglect. The department may adopt such rules and regulations as may be necessary in carrying out the provisions of this section; specifically, such rules shall provide for cooperation with local child service agencies, including but not limited to hospitals, clinics and schools and cooperation with other states in exchanging reports to effect a national registration system. [Tex. Family Code, Title 2, §34.06 (1973)]

The language of the Texas statute makes little provision for who shall have access to the information, what information shall be recorded and provides few safeguards to prevent abuse of the confidential nature of the information.

identifying information unless he is the district attorney or other law enforcement official and the purpose is to initiate court action.

(5) Unless an investigation of a report conducted pursuant to this Act determines there is some credible evidence of alleged abuse, sexual abuse or neglect, all information identifying the subject of the report shall be expunged from the central registry forthwith.

(6) In all other cases, the record of the report to the central registry shall be sealed at no later than 10 years after the subject child's 18th birthday. Once sealed, the record shall not otherwise be available, unless the commissioner of the central registry upon notice to the subjects of the report, gives his personal approval for an appropriate reason. In any case,

and at any time, the commissioner may amend, seal or expunge any record upon good cause shown and notice to the subjects of the report.

(7) At any time, the subject of a report may receive, upon request, a report of all information contained in the central registry; provided, however, that the commissioner is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation which he reasonably finds to be detrimental to the safety or interests of such person.

(8) At any time, subsequent to the completion of the investigation, but in no event later than 90 days after the receipt of the report, a subject of the report may request the commissioner to amend, seal or expunge the record of the report.

If the commissioner refuses or does not act within a reasonable time, but in no event later than 30 days after such request, the subject shall have the right to a fair hearing to determine whether the record of the report in the central registry should be amended or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this Act. The appropriate local child protective agency shall be given fair notice of the hearing. The burden, in such a hearing, shall be on the department and the appropriate local child protective services. In such hearings, the fact that there was such a finding of child abuse, sexual abuse or neglect shall be presumptive evidence that the report was substantiated.

(9) Written notice of any amendment or expungement made pursuant to the

provisions of this Act, shall be served on each subject of such report and to the appropriate local child protective service. The latter, upon receipt of such notice, shall take similar action regarding any central local registry for child abuse, sexual abuse and/or neglect.

(10) Any person who willfully permits and any other person who encourages the release of data or information contained in the central registry to persons not permitted by this Act, shall be guilty of a Class A misdemeanor.

B. The central registry may adopt such rules and regulations as may be necessary to encourage cooperation with other states in exchanging reports to effect a national registration system.

Section 14. Authorization for Appropriations. There are hereby authorized to be appropriated such sums as may be necessary to effectuate the purposes of this Act.

Section 15. Effective Date. This Act shall take effect _____.

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For particularly good state brochures concerning child abuse, see:

Ohio. Child Abuse/Neglect Prevention Kit. Prepared by the Ohio Department of Public Welfare, Children's Protective Services.

Delaware. Helping the Abused and Neglected Child: An Explanation of the Mandatory Reporting on Child Abuse. Prepared and distributed by the Delaware Division, American Association of University Women and CHAPP.

Canada, Manitoba. Child Abuse. Published by the Education Services, Manitoba Department of Health and Social Development.

Appendix B: NOTES ON LEGAL REFERENCES

For those who may wish to refer to the specific state statutes which were the basis for various language in the suggested legislation, the following references are given, keyed to section and page numbers. Additional or related references on the same subject are given as indicated.

Section 2. Definitions

Page 20: "child." See: Md. Code Ann. §27-37 (A) (B) (2) (1973).

Page 20: "abuse." This is a combination of: Conn. Gen. Stat. Ann. §17-38 (a) (1973) and La. Rev. Stat. §14-403 (b) (1973).

A number of states have made direct reference to and have defined abuse to include emotional abuse. For reference see: Dela. Code Ann. §10-1002 (1972); La. Rev. Stat. §14-403 (a) and (b) (3) (1973); Kans. Stat. Ann. §38-717 (1972); Tenn. Code Ann. §37-1203 (1973); and Tex. Family Code, Title 2, §34.02 (1973).

Page 22: "neglect." See: La. Rev. Stat. §14-4-3 (b) (4) (1973).

Page 24: "unfounded report." See: McKinney's Consol. Laws of N.Y., Soc. Serv., Title 6, §§412 (5) (1973).

Page 24: For other definitions of a child incorporating a physical or mental disability see: Dela. Code Ann. §10-1002 (1972); Nebr. Rev. Stat. §28-481; and Paige's Ohio Rev. Code §2151.42.1.

Section 3. Persons Mandated to Report

Page 26: The basic format for Section 3 has been borrowed from the New York act. See: McKinney's Consol. Laws of N.Y., Soc. Serv., Title 6, §§414 (1973).

Provision for the report of conditions or circumstances which would reasonably result in abuse has been borrowed from the Colorado mandatory reporting statutes. See: Colo. Rev. Stat. §22-10-2 (1972).

For the California law on persons mandated to report see: West's Ann. Cal. Code, Welf. & Inst., §§11161.5 (1972).

For legislative language concerning sexual abuse see the following state statutes: Ala. Code §27-21 (1972); Colo. Rev. Stat. §22-10-1(4) (1972) (sexual molestation); Conn. Gen. Stat. Ann. §17-38 (b) (1973) (sexual molestation); and Idaho Code §16-1625(m) (1973).

Section 4. Mandatory Reporting to a Medical Examiner and a Post-Mortem Investigation

Page 32: The language of this section is based on the New York statute. See: McKinney's Consol. Laws of N.Y., Soc. Serv., Title 6, §§418 (1973).

For various statutes requiring reports by coroners and medical examiners see the following: Colo. Rev. Stat. §22-10-1(4) (1972); Ill. Stat. Ann. §23-2042; Ky. Rev. Stat. §199.335(2) (1973); and Rev. Wash. Code Ann. §22.44.330(1) (1972).

Section 6. Protective Custody

Page 38: This language is also based on the New York statute cited in Section 4.

For various statutes concerning the right of a physician or the head of a hospital, clinic or similar institution to retain custody see the following: Conn. Gen. Stat. Ann. §17-38 (b) (1973); Ky. Rev. Stat. §199.335(4) (1973); Gen. Law of Mass. §119-39(A) (1972); Mich. Stat. Ann. §14.546(1); N.J. Stat. Ann. §9:6-8:16 (1973); Md. Code Ann. §27-35 (A) (F_1) (1973); Tenn. Code Ann. §37-1204 (1973); and Gen. Stat. N.C. §110-118 (d) (1972).

Section 7. Reporting Procedures

Page 40 and Page 42: Paragraphs (a), (b) and (d) are from the New York statute. See: McKinney's Consol. Laws of N.Y., Soc. Serv., Title 6, §§415 (1973).

For the state statutes concerning the content of reports see: Conn. Gen. Stat. Ann. §17-38 (c) (1973); Ore. Rev. Stat. §418.775; and W. Va. Code §49-6A-2.

Section 8. Duties of the Department Upon Receipt of the Report

Page 48 through Page 50: Paragraphs (a) through (e) are from the Texas statute cited. For similar approaches see the following: La. Rev. Stat. §14-403 (g) (1973); Tenn. Code Ann. §37-1206 (1973); and Gen. Stat. N.C. §110-118(b).

Section 9. Immunity From Liability

Page 54: This language is based on the New York statute. See: McKinney's Consol. Laws of N.Y., Soc. Serv., Title 6, §§419 (1973).

Section 10. Abrogation of Privileged Communications

Page 56: This language is based on the Texas statute. See: Tex. Family Code, Title 2, §34.03 (1973).

Section 11. Penalty for Failure to Report

Page 58: This language is based on the New York statute. See: McKinney's Consol. Laws of N.Y., Soc. Serv., Title 6, §§420 (1973).

Section 12. The Guardian Ad Litem

Page 64 and Page 66: Paragraphs (a) and (b) are based on the Colorado statute. See: Colo. Rev. Stat. §22-10-8(3) (1972) and Colo. Rev. Stat. §22-3-5 (1972).

Colorado is not the only state which requires a guardian ad litem be appointed to protect the child's interests. For other examples see: Kans. Stat. Ann. §38-821 (1972); Tenn. Code Ann. §37-248 (1973); and McKinney's Consol. Laws of N.Y., Family Court Act, §1043 (1973).

Section 13. Establishment of a Central Registry

Page 70 through Page 86: Subsection A is based on the New York statute. See: McKinney's Consol. Laws of N.Y., Soc. Serv., Title 6, §§422 (1973).

Page 86: Subsection B is based on the Texas statute. See: Tex. Family Code, Title 2, §34.06 (1973).

A number of states provide for the cooperation and exchange of child abuse reports. For examples see: Alas. Stat. §47.17.040(b) (1972); La. Rev. Stat. §14-301 (h) (1972); and Ore. Rev. Stat. §418.770.

Publications of the ECS Early Childhood Project:

EARLY CHILDHOOD DEVELOPMENT: Alternatives for program implementation in the states (June 1971: $1)

EARLY CHILDHOOD PROGRAMS FOR MIGRANTS: Alternatives for the states (May 1972: $1)

ESTABLISHING A STATE OFFICE OF EARLY CHILDHOOD DEVELOPMENT: Suggested legislative alternatives (December 1972: $1)

EARLY CHILDHOOD PLANNING IN THE STATES: A handbook for gathering data and assessing needs (January 1973: $1)

EARLY CHILDHOOD PROGRAMS IN THE STATES: Report of a December 1972 conference (March 1973: $1)

CHILD ABUSE AND NEGLECT: Alternatives for State Legislation (December 1973: $2.50)

EARLY CHILDHOOD PROJECT NEWSLETTER (published occasionally: no charge).

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